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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter Of:	)	
	)	
Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services	)	CC Docket No. 92-115
	)	
Amendment of Part 22 of the Commission's to Delete Section 22.118 and Permit the Concurrent Use of Transmitters in Common Carrier and Non-common Carrier Service	)	CC Docket No. 94-46 RM 8367
	)	
Amendment of Part 22 of the Commission's Rules Pertaining to Power Limits for Paging Stations Operating in the 931 MHz Band in the Public Land Mobile Service	)	CC Docket No. 93-116

REPLY COMMENTS OF McCAW CELLULAR COMMUNICATIONS, INC.

McCaw Cellular Communications, Inc. ("McCaw"),[1] on behalf of its cellular and messaging affiliates and Claircom Licensee Corporation ("Claircom"),[2] its Air-Ground affiliate, herewith submits its reply to comments and oppositions to its petition for reconsideration of the Commission's Report and Order in the above-captioned docket.[3] Specifically, McCaw addresses the oppositions filed by C-Two-Plus Technology, Inc. ("C2+") and MTC Communications ("MTC") to its requested clarification regarding the

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[1] McCaw is a wholly-owned subsidiary of AT&T Corp.

[2] Claircom recently completed a *pro forma* assignment of license from Claircom Communications Group, L.P. to Claircom Licensee Corporation.

[3] Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92-115 (Sept. 9, 1994) ["*Part 22 Rewrite Order*"].

termination of cellular service under circumstances of potential fraud.[4] McCaw also expresses its support for a proposal by Cellular Communications of Puerto Rico ("CCPR") to dispense with external cell filing requirements adjacent to extensive water areas and addresses the comments of GTE Service Corporation ("GTE") concerning the modification of the emission mask for 800 MHz Air-To-Ground radio service equipment.

I. THE C2+ AND MTC OPPOSITIONS ARE BASED ON A FUNDAMENTAL MISREADING OF THE COMMISSION'S RULES

In its petition for reconsideration and clarification, McCaw requested clarification that the enumeration of specific criteria for the termination of service in Section 22.901 does not limit a carrier from terminating service for other legitimate reasons. At the core, the oppositions of C2+ and MTC take issue with McCaw's statement that carriers should be permitted to terminate service to subscribers under Section 22.901 in the event of "use of an emulated phone." These parties argue that the requested clarification "would give the carrier unfettered discretion to terminate a *bona fide* subscriber in good standing for using a phone which emulates the ESN of his primary phone to place or receive calls which are billed to

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[4] C-Two-Plus Technology, Inc. Partial Opposition to Petition for Reconsideration of McCaw Cellular Communications, Inc., CC Docket No. 92-115 (filed Jan. 20, 1995) ["C2+ Opposition"]; MTC Communications Opposition to Petitions for Reconsideration Filed By TIA and McCaw Cellular, CC Docket No. 92-115 (filed Jan. 20, 1995) ["MTC Opposition"]. McCaw notes, in this regard, that Matsushita Communications Industrial Corporation of America ("Matsushita") has also filed comments urging revision of the cellular ESN regulations. Although it does not specifically address Matsushita's comments herein, McCaw opposes relaxation of the Commission's anti-fraud regulations for the reasons stated in its prior filings and in the Opposition of the Cellular Telecommunications Industry Association.

and paid for by the subscriber with his or her full knowledge and consent."[5] What these parties ignore, however, is that cellular telephones using emulated ESNs are "unlicensed transmitters in violation of Section 301 of the Act,"[6] and therefore the carrier does not have the discretion to provide service to such mobile units.

The acceptability of C2+'s and MTC's cellular ESN emulation service was fully briefed in this proceeding and the *Part 22 Rewrite Order* definitively addresses the legality of the use of such devices.[7] In addition to the potential for fraudulent misuse of cellular emulated phones and the problems caused by emulated phones in tracking and billing and fraud control software, the FCC has noted:

> [S]uch altered phones [are] not authorized by the carrier, would therefore not fall within the licensee's blanket license, and thus would be unlicensed transmitters in violation of Section 301 of the Act.[8]

The FCC then proceeded to "advise all cellular licensees . . . that the use of the C2+ altered cellular telephones constitutes a violation of the Act and our rules."[9]

Thus, the clarification sought by McCaw would assure that cellular carriers would not be prevented by Section 22.901 from terminating service to transmitters operated in violation

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[5] C2+ Opposition at 4.

[6] *Part 22 Rewrite Order* at ¶60.

[7] McCaw notes that C2+ and MTC have also sought reconsideration of the legality of using cellular ESN emulating phones. McCaw's basis for opposing this request is discussed in its comments in this docket filed on January 20, 1995.

[8] *Id.*

[9] *Id.* at ¶62.

of Section 301 of the Act. This requested clarification is not, therefore, an effort to surreptiously obtain "unfettered discretion" to terminate service to "*bona fide*" subscribers, but rather to ensure that cellular carriers -- and their subscribers -- comply with the Commission's regulations. McCaw thus urges the Commission to grant its requested clarification over the opposition of C2+ and MTC.

II. THE COMMISSION SHOULD ADOPT THE REQUEST OF CCPR TO DISPENSE WITH EXTERNAL CELL FILING REQUIREMENTS ADJACENT TO WATER AREAS

McCaw supports CCPR's request to allow cellular carriers to modify their systems without notifying the Commission if the only change in the CGSA contour is over an extensive body of water.[10] In the *Part 22 Rewrite Order*, the Commission eliminated the requirement that cellular carriers file notifications regarding changes to internal cells. The rationale for this action was to eliminate unnecessary filings and streamline the provision of service to subscribers. The Commission determined that its requirement to notify the Commission of cell site modifications and additions affecting the external contours of a system is sufficient protection to ensure that adjacent and nearby carriers are adequately informed about system changes in order to avoid potential interference.

The requirement to file for external cell modifications and additions is designed to address the usual situation where the border of one carrier's market is immediately adjacent to another market. As CCPR observes, however, not all markets abut other markets.

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[10] Petition for Reconsideration of Cellular Communications of Puerto Rico, Inc. at 2-4. CCPR's proposal, however, would retain the filing requirements for extensions into the Gulf of Mexico Service Area ("GMSA"). *Id.* at 4.

McCaw, like CCPR, operates numerous systems where one of the boundaries of the system is adjacent to a large body of water, such as the Atlantic Ocean or Pacific Ocean. In such cases, no other carrier is potentially affected by changes in the CGSA that are entirely over water. Thus, in the interests of ensuring the most rapid provision of service to the public,[11] McCaw requests the Commission to adopt CCPR's proposal on reconsideration and eliminate unnecessary regulatory delays in implementing modifications involving changes in the CGSA over large bodies of water.

III. THE COMMISSION SHOULD REINSTATE ITS PREVIOUS RULE GOVERNING THE EMISSION MASK FOR AIR-GROUND TRANSMISSIONS

Under the previous rule governing the emission mask for Air-Ground transmissions,[12] the power of any emission in each of the adjacent channels must be at least 30 dB below the peak envelope power of the main emission and the power of any emission in any of the channels other than the one being used and the adjacent channels must be at least 50 dB below the peak envelope power of the main emission. Section 22.861(a) now provides that the power of any emission in each of the adjacent channels must be at least 30 dB below the power of the total emission and the power of any emission for all other channels must be at least 50 dB below the power of the total emission.

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[11] At a minimum, the Commission should clarify that facility modifications that only change the CGSA over large bodies of water, not including the GMSA, could be performed on the basis of an FCC Form 489 filing, rather than as an unserved areas application.

[12] *See* 47 C.F.R. § 22.1111(a).

In its Petition for Reconsideration, Claircom demonstrated that implementation of the new emission mask requirement in Section 22.861(a) would severely impact it because all of the equipment for its nationwide Air-Ground system has been designed, manufactured, and type accepted according to the emission limit specifications set forth in the Commission's previous rule.[13] Claircom has millions of dollars invested in the over 135 ground stations and 650 airborne mobile stations it has deployed throughout North America, all of which were designed and manufactured in conformance with the emission mask limits under the previous rule.[14] Claircom requested that the Commission reconsider Section 22.861(a) and reinstate its previous emission mask rule.[15] Alternatively, Claircom requested that the Commission grandfather all Air-Ground equipment that was designed and manufactured prior to January 1, 1995, the effective date of the new Part 22 rules.[16] Claircom also requested that the Commission adopt a five-year transition period for compliance for new Air-Ground equipment being manufactured at least to enable Claircom to recoup a substantial portion of its investment in the Air-Ground equipment manufactured under the previous specifications.[17] Finally, Claircom requested that at a minimum the Commission should require that the power of any emission in any of the channels other than the one being used

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[13] McCaw Petition at 39.

[14] *Id.*

[15] *Id.* at 40.

[16] *Id.*

[17] *Id.*

and the adjacent channels be at least 46 dB below the power of the total emission in order to account for the change in the Commission's measurement method.[18]

As an initial matter, in its "Comments and Opposition," GTE agreed with Claircom's suggestion that the FCC should grandfather equipment designed and manufactured prior to January 1, 1995.[19] However, GTE requested that the Commission retain Section 22.861(a) in order to "better protect against interference among Air-Ground licensees."[20] GTE also opposed Claircom's alternative request to reduce the transmitter emission mask of non-adjacent channels from 50 dB to 46 dB.[21]

GTE's premise that reduction in the transmitter emission mask to the previous level would make Air-Ground systems more susceptible to interference is flawed in several respects. First, there are no interference problems among the Air-Ground licensees. Claircom's equipment was designed to take into account all the significant sources of interference and currently operates in conformance with the interference requirements in Section 22.861(b).[22] GTE's illusory interference prevention claim is not a sufficient basis to justify a change in the emission mask rule that will cost Claircom millions of dollars to implement.

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[18] *Id.* at 41.

[19] GTE Service Corporation Comments and Opposition at 13.

[20] *Id.*

[21] *Id.*

[22] Section 22.861(b) requires that the power of any emission in each of the adjacent channels must not exceed -130 dBm at any ground station receiver, while the emission power in all other channels cannot exceed -148 dBm at any ground station receiver.

Second, compliance with the interference requirements in Section 22.861(b) does not depend on the air terminal emission mask requirement in 22.861(a). It is entirely inappropriate to attempt to support a change in the emission mask requirements on compliance with the interference specifications in Section 22.861(b) because there is no linkage between the two. Assume, for example, that the transmitter emissions fail the mask requirement in Section 22.861(a) so that the adjacent channel emission power is -25 dB/channel and the emission power in other channels is -45 dB/channel. The resulting interference levels still will meet the interference requirement in Section 22.861(b) by appropriately setting the power of the total emission. When the power of the main emission is set at -105 dBm, the adjacent channel's energy will be at -130 dBm/channel and all other channels will be at 150 dBm/channel. The emission mask requirement, therefore, is not the appropriate means to control interference levels at the ground station receiver. At a minimum, McCaw requests the Commission to require that the power of any Air-Ground

emission in any of the channels other than the one being used and the adjacent channels be at least 46 dB below the power of the total emission in order to account for the change in the Commission's measurement method.

IV. CONCLUSION

For the foregoing reasons, McCaw respectfully requests the Commission to grant its request to clarify the requirements governing termination of service to subscribers notwithstanding the objection of MTC and C2+. McCaw also believes the record supports permitting cellular carriers to make modifications to cell sites without notification if the only change the CGSA is over a large body of water. Finally, McCaw urges the Commission to reinstate its previous Air-Ground emission mask rule or, alternatively, to grandfather all Air-Ground equipment that was designed and manufactured prior to January 1, 1995, and to adopt a five-year transition period for compliance. At a minimum, McCaw requests the Commission to require that the power of any Air-Ground emission in any of the channels

other than the one being used and the adjacent channels be at least 46 dB below the power of the total emission in order to account for the change in the Commission's measurement method.

Respectfully submitted,

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Dated: January 30, 1995

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January, 1995, I caused copies of the foregoing Reply Comments to be mailed via first-class postage prepaid mail to the following:

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